IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

WP(C).No. 3928 of 2007(P)

PETITIONER:

REMADEVI, AGED 46 YEARS,
W/O.LATE SASIDHARAN NAIR, CHILAMBARA VEEDU,
EDAIKODU, NEMOM P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS:

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1. SUB DIVISIONAL MAGISTRATE,
THIRUVANANTHAPURAM.

2. THE SUB INSPECTOR OF POLICE,
POOJAPPURA POLICE STATION,
THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.C.M.KAMAPPU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C).No.3928 of 2007

Dated this the 2nd day of April, 2007

JUDGMENT

The petitioner is the widow of a person who expired on 12.11.2004 and in respect of whose death a crime under Section 174 I.P.C has been registered on 12.11.2004. After completing the investigation, a report was submitted before the Sub Divisional Magistrate. On receipt of the said report, the petitioner appeared before the Sub Divisional Magistrate and raised objections against the said report. Thereupon, as directed by the Sub Divisional Magistrate, the Assistant Commissioner of Police had conducted an investigation and has again submitted a final report to report to the Court that no offence has been committed in respect of the death and it was a case of natural death on account of illness.

2. The petitioner claims to be aggrieved by the investigation conducted and the consequent procedure adopted by the Sub Divisional Magistrate in not finally disposing of the proceedings under Section 176 Cr.P.C. The petitioner's counsel prays, in the course of the submission at the Bar, that an appropriate direction for appropriate investigation by a competent agency may be directed.

3. The petitioner has consistently been complaining that her husband died as a result of injuries suffered by him when the driver of

the autorickshaw, in which she along with her husband was travelling, was taken forward suddenly before the petitioner's husband brought out from the autorickshaw completely. It is contended that this negligent conduct on the part of the driver of the autorickshaw had resulted in injuries for the deceased husband to which he subsequently succumbed. The postmortem report shows that death was due to peritonitis following blunt injury sustained to the abdomen.

4. The crucial question is whether the petitioner's deceased husband had suffered any injuries on 9.11.04 in any accident and whether such injuries suffered by him were responsible for his death. The further question that arises for consideration is whether there was any culpable negligence on the part of the driver of the autorickshaw.

5. The grievance of the petitioner in substance is that a proper investigation has not been conducted into allegations raised by her. The case diary has been made available for my perusal. Case sheet relating to admission/treatment of the deceased from 9.11.04 12.11.04 is not seen perused by any officer. It is not possible from the materials presently available to hazard an opinion as to whether there were any fresh injuries suffered by the deceased on 9.11.04 and whether such injuries, if any, are attributable to the negligent conduct of the autorickshaw driver.

6. I shall, at this early stage of investigation, carefully avoid any expression of opinion on merits about the cause of the injuries suffered or negligence of the driver of the autorickshaw. Suffice it to say that I am totally convinced that a proper investigation has not been conducted and the petitioner's grievance has not been adverted to at all in seriousness by any Investigating Officer. The case diary does not show any proper action taken by the Investigating Officer. Of course, I do not lose sight of the fact that a relative of the deceased had lodged the F.I statement in which no allegations are raised that the deceased had suffered injuries on account of negligence of the autorickshaw driver.

7. Be that as it may, the statement of the petitioner that her deceased husband had suffered injuries as a result of the culpable negligence of the autorickshaw driver on 9.11.04, I am satisfied, has not been properly investigated at all. I am satisfied that appropriate direction deserves to be issued.

8. This Writ Petition is, in these circumstances, allowed in part. It is directed that further investigation into Crime No.301 of 2004 of Poojappura police station shall be entrusted by the City Commissioner of Police, Trivandrum to a senior competent police official who shall conduct such investigation as expeditiously as possible and submit appropriate final report to the competent

authority. I make it clear that it shall be investigated pointedly as to whether the deceased had suffered any injuries in any such accident on 9.11.2004 and whether the accident was attributable to any negligent conduct on the part of the autorickshaw driver. Investigation shall be conducted as expeditiously as possible. The learned Government Pleader shall communicate this direction to the Commissioner of Police, Trivandrum who has not been specifically arrayed as a party in this proceedings. The action taken in the matter shall be communicated to the petitioner's counsel, within a period of 30 days from this date.

(R.BASANT, JUDGE)

rtr/-